

Oregon, Southern Idaho & Wyoming District Council of Laborers, Laborers International Union of North America, Local 320 and Northwest Natural Gas Company and Rockford Corporation and Plumbers, Steamfitters and Marine Fitters Local 290, a/w the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO

Oregon, Southern Idaho & Wyoming District Council of Laborers International Union of North America, Local 320 and Rockford Corporation and Northwest Natural Gas Company and Plumbers, Steamfitters and Marine Fitters Local 290, a/w the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Cases 36-CD-217 and 36-CD-218

January 31, 2000

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The charges in this Section 10(k) proceeding were filed on June 22, 1999, by Northwest Natural Gas Company, and on June 23, 1999, by Rockford Corporation, the Employers, alleging that the Respondents, Oregon, Southern Idaho & Wyoming District Council of Laborers (Laborers District Council) and Laborers International Union of North America, Local 320 (Laborers Local 320), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employers to assign certain work to employees it represents rather than to employees represented by Plumbers, Steamfitters and Marine Fitters Local 290 affiliated with the United Association of Journeymen and Apprentices of the Plumbers and Pipefitting Industry of the United States and Canada, AFL-CIO (Plumbers Local 290). The hearing was held on July 12, 1999, before Hearing Officer Jo Anne P. Howlett.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Employer Northwest Natural Gas Company d/b/a Northwest Natural is an Oregon corporation, headquartered in Portland, Oregon, and is in the business of supplying natural gas to customers in Oregon and Southwest Washington. In the 12 months immediately prior to the date of the hearing, Northwest Natural had gross revenues from sales or performance of services directly to customers outside the state of Oregon in excess of \$50,000, made gross purchases of materials or services directly from outside the State of Oregon in excess of

\$50,000, and had gross revenues from all sales or performance of services in excess of \$1 million. Rockford Corporation is an Oregon corporation with offices at North Plains, Oregon, and is a general contractor engaged in pipeline construction. In the 12 months immediately prior to the date of the hearing, Rockford Corporation's gross revenues from sales or services directly to customers outside the State of Oregon exceeded \$50,000 and its gross revenues from all sales and services exceeded \$1 million. We find that Employers Northwest Natural and Rockford Corporation are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Laborers District Council, Laborers Local 320, and Plumbers Local 290 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Northwest Natural is engaged in a project designed to turn depleted natural gas wells into underground storage reservoirs. The first system, constructed in 1988 and 1989, consists of a pipeline 16 inches in diameter. In 1997, in order to increase storage capacity, Northwest Natural began construction of a supplemental pipeline, running parallel to the existing line but measuring 24 inches in diameter. The initial phase of the five-phase supplemental pipeline project, called the Mist (Oregon) Underground Storage and Pipeline Project (Mist Project), was completed in 1998. Northwest Natural retained Rockford as the general contractor on that phase of the project and members of Plumbers Local 290 performed work on the project.

The third phase of the Mist Project, a 27-1/2-mile pipeline to carry natural gas from the Mist storage facility to an existing pipeline in North Plains, Oregon, is called the "South Mist Feeder Loop." In the fall of 1998, Northwest Natural awarded Rockford Corporation the contract to install the main pipeline for phase three. Rockford had collective-bargaining agreements with Plumbers Local 290,¹ International Union of Operating Engineers, and the Teamsters Union.

Beginning in December 1998, Lee Clinton, business manager for Laborers District Council, contacted Rockford's president, Lemmie Rockford, on several occasions seeking to obtain a collective-bargaining agreement between Rockford and District Council. He specifically sought to have Rockford assign certain unskilled pipeline work to employees represented by the Laborers Union. Rockford declined to sign an agreement with the Laborers Union, citing its contract with Plumbers Local 290 covering that work. Clinton admonished Rockford that "[y]ou don't want to get the International involved in this and have a work stoppage."

¹ Rockford Corporation and Plumbers Local 290 have had a collective-bargaining agreement since 1989. Northwest Natural has had a collective-bargaining agreement with Plumbers Local 290 since 1997.

In March 1999,² Clinton and his assistant, John Sutherland, informed the Business Manager/Financial Secretary of Plumbers Local 290 Matt Walters that the Laborers Union was claiming certain unskilled pipeline work and that if Rockford did not sign an agreement with Laborers, it would picket the job. Walters told Clinton and Sutherland that Plumbers Local 290 had agreements with Rockford and Northwest Natural.

In early April, Mike McCoy, a vice president of Northwest Natural, received a telephone voice message from Clinton, stating that there would be strike activity against Rockford and Northwest Natural if the Laborers did not represent the employees performing the helper work on the upcoming South Mist Feeder Loop job.³

Work on the South Mist Feeder Loop began in June. During peak construction, Rockford expected to employ as many as 300 to 400 employees, variously represented by the Teamsters Union, Operating Engineers, and Plumbers Local 290. Plumbers Local 290 supplies skilled welders, pipefitters, and helpers. Only the work of the Plumbers Local 290-represented helpers—who perform work throughout the scope of the project—is in dispute. A brief overview of how the work is accomplished is as follows.

After the right of way is cleared, construction of the pipeline begins with ground breaking. This is accomplished by ditch digging machines and large equipment run by Operating Engineers, assisted by Plumbers Local 290-represented helpers. Functions in support of ground breaking equipment operations are known as “swamping.”

The welding of the pipes occurs above ground. Pipe is set on “skids,” lumber measuring 4-by-6 inch by 8-foot lengths, that are stacked to provide a bridge on which the pipes can rest. Helpers represented by Plumbers Local 290 are directly involved in setting up the skids, removing them on completion of the weld, loading them on trucks for transport to the next site, and unloading them for the next weld job.

Sandbags are sometimes required to keep the pipe in place, forestall erosion, or to protect the pipe and pipe welds. Plumbers Local 290 helpers regularly perform sandbag work.

Stringing involves laying pipe alongside the ditch. Plumbers Local 290 helpers hook attachments onto the pipe so that it can be placed either on the ground or on top of skids. It involves some rigging and is an operation that must be performed throughout the project.

Drilling involves the use of jackhammers and other equipment to drill holes in order to place dynamite to blast away rock. Because the third phase involves in-

stalling pipeline just a few feet from the existing line, no drilling is likely to be necessary. Drilling did occur on the second (1997–1998) phase however, and may be necessary in the future. Plumbers Local 290-represented helpers regularly perform this type of work.

Plumbers Local 290 helpers also do pipe wrapping, that is, the placing of a blue coating over the pipe where there has been a repair or where a weld has been made. Helpers may have to use special equipment to test the coatings.

In addition, helpers perform a number of other support functions for equipment operators and welders. Among these are using small tools to hand dig “bell holes” to allow welders to make certain welds, operating welding machines, moving welding trucks, handing rods to welders, grinding welds, laying out mud board, assisting in pipe bending, lining up and spacing pipe, and participating in the “fire line” where welds are finished.

When pipe is lowered into a ditch, helpers hook clamps to pipe, place straps under the pipe, remove skids and debris, and perform other assistance to the operators of the side boom cranes. Once sections of pipe have been placed in the ditch, helpers assist in the tying together of sections of pipe.

As the above description shows, the work of the helpers is integrated into nearly every part of the pipeline work. Rockford formally awarded the helper work to Plumbers Local 290 on June 17. Later on the same date, Walters met with Clinton and Sutherland in the offices of the District Council of Laborers. According to Walters’ uncontradicted testimony, Clinton told him that Rockford was either going to sign an agreement with the Laborers and pay Associated General Contractor wages and benefits, or they were going to picket the job. Clinton also said either that he planned to or had already spoken to Teamsters Union members about honoring a possible Laborers’ picket line. Walters advised Clinton that Plumbers Local 290 had a contract with Rockford and Northwest Natural covering the work they sought. Outside the office, Sutherland confirmed Clinton’s statement regarding the possibility of picketing and added that he believed some of the Plumbers Local 290 members might honor a Laborers’ picket line.

Still later that day, Walters received a telephone call from Teamsters Union Representative Lynn Lehrbach, advising him that he had received a call from Clinton that morning, requesting that the Teamsters honor a Laborers’ picket line protesting the awarding of the helpers work to Plumbers Local 290.

At around the same time, Frank Welch, an estimator employed by Rockford, told Lemmie Rockford that Clinton told him that, absent an agreement regarding Laborers-represented employees performing the disputed work, the Laborers would take action. Rumors regarding potential labor unrest relating to the Laborers’ demands were widespread among Rockford’s employees.

Walters testified that he told Northwest Natural’s McCoy that if the helper work were reassigned from

² Dates hereafter refer to 1999 unless otherwise noted.

³ McCoy testified without contradiction that he also had conversations directly with Clinton regarding his desire for the Laborers to perform helpers’ work on the project. McCoy understood Clinton to be speaking not only on behalf of the District Council, but also on behalf of Laborers Local 320.

Plumbers Local 290 to Laborers, he would consider that a violation of the contract and would take action against both Northwest Natural and Rockford.

B. Work in Dispute

The disputed work involves all unskilled “laborers”⁴ work to be performed on the Mist Feeder Loop gas pipeline project including, but not limited to, swamping, skidding, sandbagging, stringing, drilling, and pipe wrapping, but excluding work covered under the Teamsters and Operating Engineers collective-bargaining agreements.

C. Contentions of the Parties

The Employer Northwest Natural contends that the current assignment of the disputed work to employees represented by Plumbers Local 290 should not be disturbed. Northwest Natural contends that it entered into a collective-bargaining relationship with Plumbers Local 290 in order to achieve an ongoing, reliable source of appropriately-skilled labor to complete the multiyear Mist Project successfully. These employees’ involvement in earlier phases of the project produced expertise in carrying out all aspects of the disputed work. They have demonstrated their ability to work productively with employees represented by other unions at work on the project. Northwest Natural would suffer substantial economic harm and its customers would endure inconvenience and possibly disrupted or impeded service in the supply of natural gas if picketing were to interrupt the timely completion of the project.

The Employer Rockford corporation contended at the hearing that it preferred to have the disputed work continue to be carried out in accordance with its assignment to Plumbers Local 290.

Plumbers Local 290 contends that Rockford Corporation has always assigned unskilled laborers’ work to employees it represents and that the current work assignment demonstrates its continued preference to have the work carried out by employees represented by Plumbers Local 290. Local 290 members have performed similar work to that at issue in this proceeding for a number of companies in the area, and have the necessary ability, training, skill, and experience to perform all aspects of the disputed work. Plumbers Local 290 and Rockford have an established and cooperative relationship which enhances their ability to carry out the work efficiently. Reassigning the work would result in considerable displacement of employees represented by Plumbers Local 290, who have demonstrated their skills in performing the disputed work.

⁴ The term “laborers” work is used by the parties to describe the disputed helpers work involved in this proceeding. It appears clear, however, that this term is used merely in a broad, generic sense, to describe unskilled work not associated with a particular craft or trade otherwise used in the construction industry. It is not being used as a term of art or to describe work belonging to the Laborers Union.

Neither Laborers District Council nor Laborers Local 320 appeared at the hearing or filed a brief.

D. Applicability of the Statute

As described above, beginning as early as December 1998 and continuing into June 1999, representatives of the Laborers District Council and Laborers Local 320 made repeated demands for the disputed work to both Employers, Northwest Natural and Rockford, and to the union representing the employees who were assigned the disputed work, Plumbers Local 290. Uncontradicted testimony from Northwest Natural’s Vice President McCoy, from Rockford’s President Lemmie Rockford, and from Plumbers Local 290 Business Manager Walters establishes that Clinton and Sutherland made consistent demands that the work should be reassigned from employees represented by Plumbers Local 290 to employees represented by the Laborers Union. The testimony further establishes that this demand was accompanied by threats of picketing and work disruptions if the work was not reassigned.

Under these circumstances, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. Further, it is undisputed that there exists no agreed on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of the disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Board certification and collective-bargaining agreements

There is no outstanding Board certification relevant to the work at issue in this proceeding.

Plumbers Local 290 has had a collective-bargaining agreement with Rockford Corporation since approximately 1989. The terms of that agreement cover the work at issue on the South Mist Feeder Loop pipeline project. Rockford has no collective-bargaining agreement with Laborers District Council or Laborers Local 320.

In 1997, Plumbers Local 290 and Northwest Natural executed a collective-bargaining agreement covering the pipeline work involved in this proceeding, and the agreement runs through March 2003. Northwest Natural does not have any collective-bargaining agreement with Laborers District Council or Laborers Local 320.

We find that this factor favors awarding the work in dispute to employees represented by Plumbers Local 290.

2. Employer preference and past practice

Both Northwest Natural and Rockford Corporation expressed their preference for employees represented by Plumbers Local 290 to perform the disputed work. Rockford has routinely used employees represented by Plumbers Local 290 to do unskilled pipeline project work and its current assignment is consistent with that long-established practice.

We find that this factor favors awarding the disputed work to employees represented by Plumbers Local 290.

3. Area and industry practice

Plumbers Local 290 Business Manager Walters testified that individuals represented by his union have performed work similar to that involved in this proceeding for a number of contractors in the Pacific Northwest, including Snelson Corporation, Stromberg Enterprises, Hinkles and McCoy, Loy Clark Pipeline, Northwest Metal Fab Corporation, and Continental Utilities.

No evidence was presented regarding the assignment of work to employees represented by the Laborers Union.

We find that this factor favors awarding the work in dispute to employees represented by Plumbers Local 290.

4. Relative skills and training

Walters testified that most of the Plumbers Local 290-represented helpers on the current project have gone through formal, union-provided training courses, in addition to having on-the-job training. The training includes, inter alia, welding, safety procedures, and the operation of the pipeline itself. The record also establishes that the Plumbers Local 290-represented helpers have previously successfully performed the work in dispute, thus establishing their ability to do the work.

The record contains no evidence regarding the skills and training of employees represented by Laborers District Council or Laborers Local 320.

We find that this factor favors awarding the work in dispute to employees represented by Plumbers Local 290.

5. Economy and efficiency of operations

The record establishes that employees represented by Plumbers Local 290 have an established and successful working relationship with the other employees on the project. This cooperation is vital given the close interrelationship between the functions each group is responsible for carrying out. Reassigning the work to another group of employees would result in disruption of the work flow and would decrease efficiency and productivity.

We find that this factor favors awarding the work in dispute to employees represented by Plumbers Local 290.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Plumbers, Steamfitters and Marine Fitters Local 290, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO are entitled to perform the work in dispute. We reach this conclusion relying on collective-bargaining agreements, Employer preference and past practice, area and industry practice, relative skills and training, and efficiency and economy of operations.

In making this determination, we are awarding the work to employees represented by Plumbers Steamfitters and Marine Fitters Local 290, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.⁵

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Northwest Natural Gas Corporation and/or Rockford Corporation who are represented by Plumbers, Steamfitters and Marine Fitters Local 290, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO are entitled to perform all unskilled "laborer's" work to be performed on the Mist Feeder Loop gas pipeline project including, but not limited to, swamping, skidding, sandbagging, stringing, drilling, and pipe wrapping, but excluding work covered under the Teamsters and Operating Engineers collective-bargaining agreements.

2. Oregon, Southern Idaho & Wyoming District Council of Laborers and Laborers International Union of North America, Local 320 are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Northwest Natural Gas Company or Rockford Corporation to assign the disputed work to employees represented by it.

⁵ Northwest Natural has requested a broad award that will apply to all disputed work, present and future, on Northwest Natural's pipeline project. Northwest Natural argues that because this project is a multi-phase, multiyear project, a broad award "will result in labor certainty and avoid jurisdictional disputes in the future." Generally, however, in order to support a broad award, there must be evidence that the disputed work has been a continuing source of controversy in the relevant geographic area, that similar disputes are likely to recur, and that the charged party has a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. See, e.g., *Electrical Workers IBEW Local 104 (Standard Sign)*, 248 NLRB 1144, 1148 (1980). We find insufficient evidence to warrant the issuance of a broad award under these standards. Accordingly, our determination is limited to the controversy that gave rise to this proceeding.

3. Within 14 days from this date, Oregon, Southern Idaho & Wyoming District Council of Laborers and Laborers International Union of North America, Local 320 shall notify the Regional Director for Region 19 in writ-

ing whether they will refrain from attempting to force Northwest Natural and Rockford Corporation, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.